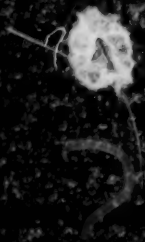

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In the Supreme Court of the United States

OCTOBER TERM, 1934

No. 937

DE FOREST HULBURD, INDIVIDUALLY AND AS EXECUTOR OF AND TRUSTEE UNDER THE WILL OF CHARLES H. HULBURD, DECEASED, PETITIONER

v.

GUY T. HELVERING, COMMISSIONER OF INTERNAL REVENUE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINIONS BELOW

The two opinions of the Board of Tax Appeals (R. 67–79) are reported in 21 B. T. A. 23 and 27 B. T. A. 1123. The opinion of the Circuit Court of Appeals (R. 97–105) is unreported.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered January 11, 1935 (R. 106). A petition for rehearing was filed on January 19, 1935 (R. 106),

and was denied April 15, 1935 (R. 107). Petition for a writ of certiorari was filed May 2, 1935. Jurisdiction is conferred on this Court by Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTIONS PRESENTED

1. May the liability of a decedent for a tax of a dissolved corporation be enforced against his estate or the executors thereof under Sections 280 and 281 of the Revenue Act of 1926, notwithstanding the fact that the executors were discharged by the probate court in 1925?

2. If so construed, do Sections 280 and 281 violate the due-process clause of the Fifth Amendment?

3. Did the court below err in holding that the executor Hulburd was liable as a legatee transferee?

4. Was the enforcement of the liability barred by the statute of limitations?

STATUTES INVOLVED

The statutes involved are found in the Appendix, *infra*, pp. 16–24.

STATEMENT

From the findings of fact and the stipulation of facts by the parties, the following facts are taken:

DeForest Hulburd and Hugh McBirney Johnston, residents of Illinois, were executors and trustees under the will of Charles H. Hulburd, who

died January 14, 1924, a resident of Illinois. Mr. Johnston has died since the institution of this proceeding, leaving DeForest Hulburd as the only surviving executor and trustee. (R. 39, 67.)

DeForest Hulburd was also a legatee under the will (R. 20) and as such received cash of $20,685.79 in addition to other assets (R. 58–59, 67).

The decedent, Charles Hulburd, in his own right owned 80 shares of stock of the Van Sicklen Company of Elgin, Illinois (R. 38).

In 1919, this Illinois corporation sold all of its assets to the Van Sicklen Speedometer Company, a Delaware corporation, and was dissolved in September of that year. In consideration for the transfer, the Illinois corporation received $250,000 and 5,000 shares of stock of the Delaware company, all of which it distributed to its stockholders. (R. 37–38, 77.)

Charles H. Hulburd in his own right received $8,000 in cash and 160 shares of stock as his distributive share (R. 38, 77).

The Illinois corporation had filed a return for the fiscal year ending September 30, 1919, in December 1919. On November 17, 1924, the Commissioner made an additional assessment of income and profits taxes against the corporation in the amount of $227,872.06 plus a penalty of $113,936.03. These taxes have not been paid. (R. 67–69.)

On October 27, 1926, the Commissioner mailed a letter to the "Estate of Charles H. Hulburd, c/o DeForest Hulburd, 86 East Randolph Street,

Chicago, Illinois ", asserting a liability against the estate as a transferee of the Van Sicklen Company. It was then claimed that the estate was liable to the extent of $24,000 for taxes of the corporation, but it was later admitted that the liability does not exceed $8,000 (the distribution made in cash to Charles H. Hulburd) plus 6 percent interest from February 26, 1926. (R. 15–18, 68.)

On April 16, 1924, the executors had written to the Commissioner requesting that all taxes due on account of income received during the lifetime of Charles H. Hurlburd be assessed within one year after his death; that is, by January 14, 1925, in accordance with Section 250 (d) of the Revenue Act of 1921. This letter made no reference to the liability of the estate as a transferee. Deputy Commissioner Bright on April 20, 1925, replied that certain income taxes of the decedent would be at once listed for assessment and the case closed under Section 277 (a) (3). (R. 68, 77.)

On February 26, 1925, the executors had filed their final account with the probate court, which account was thereupon approved and the executors discharged (R. 64, 68).

On the first hearing the Board of Tax Appeals held that the collection of the deficiency was not barred by the statute of limitations. On the second hearing the Board held that the estate was not liable as a transferee and declined to decide whether the distributees of the assets of the estate were liable.

The Commissioner appealed and in support of the Board's decision the executor, Hulburd, urged both that there was no liability and that in any event the enforcement of the liability was barred by the statute of limitations.

The Circuit Court of Appeals reversed the Board's decision against the Government. It held that DeForest Hulburd was liable both as an executor and as a legatee (except that as a legatee he was only liable to the extent of $4,000) and that the statute of limitations did not bar the enforcement of the liability.

ARGUMENT

I

THE ASSESSMENT AND COLLECTION OF THIS LIABILITY ARE NOT BARRED BY THE STATUTE OF LIMITATIONS

The decedent, Charles H. Hulburd, was clearly liable as a transferee of the Van Sicklen Company for its 1919 taxes, at least to the extent of the sum of $8,000, which he received upon the dissolution of the corporation in that year. He was liable notwithstanding the fact that the corporation acquiring the assets might also be liable. *Hunn* v. *United States*, 60 F. (2d) 430 (C. C. A. 8th); *Fairless* v. *Commissioner*, 67 F. (2d) 475 (C. C. A. 6th); see, also, *Pierce* v. *United States*, 255 U. S. 398.

The corporate return for the fiscal year ended September 30, 1919, was filed in December 1919, and the five-year period of limitation for assessment of the tax against the transferor would not have

expired until December 1924. Section 250 (d) of the Revenue Acts of 1918 and 1921 and Section 277 (a) (2) of the Revenue Act of 1924. Hence, when Mr. Hulburd died in January 1924, the liability was alive. We believe that the liability survived and became a valid claim against his estate. *Richmond* v. *Irons,* 121 U. S. 27; *Buck* v. *Helvering,* 73 F. (2d) 760 (C. C. A. 9th); *Spargo* v. *Converse,* 191 Fed. 823 (C. C. A. 2d).[1]

The assessment against the transferor was made November 17, 1924, within the five-year period, and after the passage of the Revenue Act of 1924. Hence, the Commissioner had six years within which to proceed against the transferor or transferee (Section 278 of the Revenue Act of 1924). *Russell* v. *United States,* 278 U. S. 181; *Updike* v. *United States,* 281 U. S. 489.

This six-year period would not have run until 1930. In the meantime, Section 280 of the Revenue Act of 1926 was enacted on February 26, 1926, and under Section 280 (b) (2) the Commissioner was compelled to proceed against the transferee before February 26, 1927. *Suisman & Blumenthal* v. *Eaton,* 74 F. (2d) 716 (C. C. A. 2d).

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[1] While the cases cited arose where liability of the stockholder was being enforced under a statute and not under the trust fund doctrine, we think the same rule would apply. The liability was enforced against the executor of the transferee in the *Phillips* case, *infra.* See opinion of the Circuit Court of Appeals for the Second Circuit in that case, 42 F. (2d) 177.

He did so, on October 27, 1926, sending a deficiency notice to "Estate of Charles H. Hulburd, c/o DeForest Hulburd, 86 East Randolph Street, Chicago, Ill." On December 20, 1926, the executors petitioned the Board of Tax Appeals for a review of the Commissioner's determination.

The effect of the deficiency notice was to stay the running of the statute of limitations until the decision of the Board becomes final and for sixty days thereafter. Sections 274 (a), 277 (b), and 280 of the Revenue Act of 1926, and Section 505 of the Revenue Act of 1928, *infra*. See also *American Equitable Assur. Co. of New York* v. *Helvering*, 68 F. (2d) 46 (C. C. A. 2d); *Continental Products Co.* v. *Commissioner*, 66 F. (2d) 434 (C. C. A. 1st). The decision of the Board has not yet become final. Section 1005 of the Revenue Act of 1926, *infra*.

The petitioner urges that the notice of deficiency was not sufficient, since it was addressed to the "estate" which had been closed. But the courts have repeatedly held that taxpayers or transferees who receive notices of deficiency, and appeal to the Board from them, may not urge technical defects in them to question the jurisdiction of the Board or to say that the filing of them has not suspended the running of the statute of limitations. *Commissioner* v. *New York Trust Co.*, 54 F. (2d) 463 (C. C. A. 2d); *Haag* v. *Commissioner*, 59 F. (2d) 516

(C. C. A. 7th); *Burnet* v. *San Joaquin Fruit & Investment Co.*, 52 F. (2d) 123 (C. C. A. 9th); *Warner Collieries Co.* v. *United States*, 63 F. (2d) 34 (C. C. A. 6th); *In re Wolf Mfg. Industries*, 56 F. (2d) 64 (C. C. A. 7th); *American Equitable Assur. Co. of New York* v. *Helvering, supra; Continental Products Co.* v. *Commissioner, supra; Commissioner* v. *Nichols & Cox L. Co.*, 65 F. (2d) 1009 (C. C. A. 6th); *Buzard* v. *Helvering* (App. D. C.), decided April 1, 1935, not officially reported, but found in 1935 C. C. H., Vol. 3, par. 9288.

In view of these decisions, we submit that the notice of deficiency was sufficient to stay the running of the statute of limitations both as to the executors and as to Mr. Hulburd, as legatee, and that (assuming the discharge of the executors did not destroy their liability) the liability may still be enforced against the petitioner either as executor or as legatee.

The preceding argument is not dependent upon the assertion that Sections 280 and 281 of the Revenue Act of 1926 create a new liability, and hence is not in conflict with *Phillips* v. *Commissioner*, 283 U. S. 589, or *Michael* v. *Commissioner*, 75 F. (2d) 966 (C. C. A. 2d). We did not urge the contrary before the Circuit Court of Appeals, and we question whether the court meant to hold otherwise, although there is language in its opinion from which such an inference might be drawn.

II

THE DISCHARGE OF THE EXECUTORS WITHOUT NOTICE TO THE GOVERNMENT DOES NOT PREVENT THE ASSERTION OF THE LIABILITY AGAINST THEM

The court below held that the discharge of the executors was ineffective as against the Government, because the executors had not given notice of their discharge as required by Section 281 (b) of the Revenue Act of 1926. The petitioner, relying upon *Liberman's Committee* v. *Commissioner*, 54 F. (2d) 527 (C. C. A. 2d), claims that this section had no retroactive effect and only applied to executors appointed after the enactment of the Revenue Act of 1926.

We feel certain that the case of *Liberman's Committee* does not go so far. That case involved not an executor but guardians of a mentally incompetent person, and the court held that the Committee's authority ceased absolutely with the incompetent's death and was not revived by Section 281 (a), subsequently enacted. It should be noted, however, that the court strongly intimated that the notice might be deemed a sufficient notice to the executors under Section 281 (d), if the record had shown that the executors and the members of the former Committee were the same.

We believe that there are sufficient differences between the authority of a guardian of an incompetent and an executor of an estate to justify a difference in the application of the statute. More-

over, the Commissioner, in the *Liberman's Committee* case, had at least a constructive notice of the discharge, and here he did not.

In the court below, the Government did not rely so much upon Section 281 as upon the fact that in Illinois, as in many jurisdictions, a discharge of an executor is conclusive only as to matters presented in his ~~comments~~ accounts. *Cutright* v. *Stanford,* 81 Ill. 240; *Diversey* v. *Johnson,* 93 Ill. 547; *Starr* v. *Willoughby,* 218 Ill. 485; *Fraser* v. *Fraser,* 149 Ill. App. 186; *Maguire* v. *City of Macomb,* 293 Ill. 441.

When the estate was closed on February 26, 1925, without satisfying the liability of the decedent for the tax of the Van Sicklen Company, the Commissioner could no doubt have moved to have the order approving the account and discharging the executors set aside. Even if he had been required to do so within a reasonable time, a reasonable period had not expired when the Revenue Act of 1926 was passed on February 26, 1926, giving the Government a remedy for enforcing the liability and setting up an independent statute of limitations.

Hence, either under Sections 280 and 281, as the court below held, or under Section 280 alone, we submit that this liability which was alive when the Revenue Act of 1926 was passed became enforcible.

We see no reason why a state law providing when the administration of an estate shall be closed should be effective against the Government, when a state law saying when a corporation shall be

considered defunct is not binding on the Government. See *In re Wolf Mfg. Industries, supra; Commissioner* v. *Renyx,* 66 F. (2d) 260 (C. C. A. 2d); *Phillips* v. *Commissioner, supra.*

It is true that the same court which decided this case apparently held otherwise in *Haag* v. *Commissioner, supra,* but that case involved a question of jurisdiction, and the court sustained the Board's jurisdiction on the ground that the transferee was liable as a legatee, if not as an executrix.

Lindley v. *United States,* 59 F. (2d) 336 (C. C. A. 9th), relied upon by the petitioner, was a suit to recover an erroneous refund, not a proceeding to enforce a transferee liability, and the court, basing its decision largely on California law regarding the administration of estates,[2] held that the Government could recover from the legatees to whom the erroneous refund had been paid over, but not from the executors.

The petitioner also cites *Nauts* v. *Clymer,* 36 F. (2d) 207 (C. C. A. 6th). The deficiency notice in that case was mailed under the Revenue Act of 1924 (prior to the enactment of Sections 280 and 281) and the statute of limitations had run before those sections were enacted. The notice was sent

[2] For example, if a California estate is closed without payment of a debt, the creditor has no remedy except that if he had no notice he may sue the executor on his bond. See Secs. 951–956 of Probate Code, Deering's Code of Civil Procedure and Probate Code, 1931. There is no corresponding provision in the Illinois statutes. See Cahill's Illinois Revised Statutes, 1929, c. 3, Secs. 114, 119–120.

to one of three former executors and no appeal was taken to the Board. The tax proposed was paid and suit to recover it was brought in the District Court. While the Circuit Court of Appeals held that the notice was insufficient under the facts in that case, it implied that under different circumstances a notice to an acting executor might be sufficient.

Hence, each of the cases relied upon by the petitioner may be distinguished in part on the facts.

In several earlier cases, the Board of Tax Appeals held that the discharge of an executor does not deprive the United States of its right to proceed against him. See *Evans* v. *Commissioner,* 12 B. T. A. 334; *Kaufmann* v. *Commissioner,* 15 B. T. A. 141, affirmed, 44 F. (2d) 144 (C. C. A. 3d).

We concede, therefore, that there is a possible conflict in principle between decisions on this one point, but question whether it is sufficient to justify a review in this case.

III

IF NOT LIABLE AS EXECUTOR, THE PETITIONER HULBURD IS LIABLE AS A LEGATEE

The court below held that the petitioner was liable as a legatee to the extent of $4,000, he having received one-half of the residuary estate of the decedent.

As to this point, the petitioner urges, first, that the Circuit Court of Appeals was not at liberty to consider this issue, since it was not raised before the Board, and, second, that he could not be held

liable as a legatee unless assets of the Van Sicklen Company were traced into his hands.

Some of the Circuit Courts of Appeals have declined to consider issues which have not been raised before the Board of Tax Appeals. *Helvering* v. *J. L. Brandeis & Sons*, 75 F. (2d) 487, 489 (C. C. A. 8th); *Tulsa Tribune Co.* v. *Commissioner*, 58 F. (2d) 937 (C. C. A. 10th); *Glassell* v. *Commissioner*, 42 F. (2d) 653 (C. C. A. 5th); *Hartley* v. *Commissioner*, 72 F. (2d) 352 (C. C. A. 8th), affirmed on other grounds by this Court, April 29, 1935; *Atkins' Estate* v. *Lucas*, 36 F. (2d) 611 (App. D. C.); *Tricou* v. *Helvering*, 68 F. (2d) 280 (C. C. A. 9th); and *contra*, *Helvering* v. *General Utilities & Operating Co.*, 74 F. (2d) 972 (C. C. A. 4th); [1] *Guy* v. *Commissioner*, 35 F. (2d) 139 (C. C. A. 4th).

But we think the Circuit Courts of Appeals may consider questions of law not raised below when justice so requires. *Helvering* v. *General Utilities & Operating Co.*, *supra*. The issue before the Board is the correctness of the deficiency, and not the Commissioner's method of arriving at it (*Hughes* v. *Commissioner*, 38 F. (2d) 755 (C. C. A. 10th); *Atlanta Casket Co.* v. *Rose*, 22 F. (2d) 800 (C. C. A. 5th)), and when the facts are not in dispute and no additional evidence is required to present the new issue, we think the court may entertain it, if it chooses to do so.

It is a rule of this Court that it will not consider on a writ of certiorari issues not raised below.

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[1] That case is now pending before this Court on petition for a writ of certiorari, No. 939, October Term, 1934.

Blair v. *Oesterlein Co.*, 275 U. S. 220; *Burnet* v. *Commonwealth Imp. Co.*, 287 U. S. 415. But that is a rule of practice rather than a limitation of power. *Story Parchment Co.* v. *Paterson Co.*, 282 U. S. 555.

Similarly, we think that the court below had power to consider the question whether the petitioner was liable as a legatee. That question and the question whether he was liable as an executor turned on the same basic facts, and in reality were but different theories of the same general issue, namely, whether the petitioner was liable as a transferee.

The petitioner further contends that he was not liable as a legatee, since the Commissioner failed to prove that any part of the $8,000 in cash which was distributed to the decedent came into his hands.

The Commissioner proved that the petitioner as residuary legatee received in cash from the decedent's estate an amount far in excess of the sum of $8,000. We believe that is sufficient to make him liable as a transferee, and that it is not necessary to prove that the particular dollars that were transferred from the Van Sicklen Company to the decedent were thereafter transferred to the petitioner. There are no decisions directly in point on this issue, and it is not important if the petitioner was also liable as an executor.

The petitioner asks us to direct the attention of the Court to *United States* v. *Hart*, decided by the District Court for the Eastern District of Pennsyl-

vania on April 1, 1935, not yet officially reported, but found in 1935 C. C. H., Vol. 3, ¶ 9273. The question involved in that case was whether the Government might recover in an action at law against a residuary legatee of a taxpayer an amount erroneously refunded to the taxpayer. We do not believe that the decision is in point or in any way controlling.

CONCLUSION

The petitioner states that if Sections 280 and 281 of the Revenue Act of 1926 are construed as applicable to the discharged executors in this case, the statute violates the due process clause of the Fifth Amendment. He cites no authorities in support of this proposition and we know of none. It was not considered by the court below. Hence, we make no further reply to this contention.

There is no substantial conflict presented herein. The case turns largely upon its particular facts. Furthermore, the case is not of sufficient importance to justify a review by this Court. The petition should be denied.

Respectfully submitted,

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MAY 1935.

APPENDIX

Revenue Act of 1918, c. 18, 40 Stat. 1057, 1082:

> SEC. 250. (d) Except in the case of false or fraudulent returns with intent to evade the tax, the amount of tax due under any return shall be determined and assessed by the Commissioner within five years after the return was due or was made, and no suit or proceeding for the collection of any tax shall be begun after the expiration of five years after the date when the return was due or was made. In the case of such false or fraudulent returns, the amount of tax due may be determined at any time after the return is filed, and the tax may be collected at any time after it becomes due.

Revenue Act of 1921, c. 136, 42 Stat. 227, 264:

> SEC. 250. (d) The amount of income, excess-profits, or war-profits taxes due under any return made under this Act for the taxable year 1921 or succeeding taxable years shall be determined and assessed by the Commissioner within four years after the return was filed, and the amount of any such taxes due under any return made under this Act for prior taxable years or under prior income, excess-profits, or war-profits tax Acts, * * * shall be determined and assessed within five years after the return was filed, unless both the Commissioner and the taxpayer consent in writing to a later determination, assessment, and collection of the tax; and no suit or proceeding for the collection of any such taxes due under this Act

or under prior income, excess-profits, or war-profits tax Acts, * * * shall be begun, after the expiration of five years after the date when such return was filed, but this shall not affect suits or proceedings begun at the time of the passage of this Act: *Provided*, That in the case of income received during the lifetime of a decedent, all taxes due thereon shall be determined and assessed by the Commissioner within one year after written request therefor by the executor, administrator, or other fiduciary representing the estate of such decedent: * * *.

Revenue Act of 1924, c. 234, 43 Stat. 253:

SEC. 277 (a) Except as provided in section 278 and in subdivision (b) of section 274 and in subdivision (b) of section 279—

* * * * *

(2) The amount of income, excess-profits, and war-profits taxes imposed by the Act entitled "An Act to provide revenue, equalize duties, and encourage the industries of the United States, and for other purposes", approved August 5, 1909, the Act entitled "An Act to reduce tariff duties and to provide revenue for the Government, and for other purposes", approved October 3, 1913, the Revenue Act of 1916, the Revenue Act of 1917, the Revenue Act of 1918, and by any such Act as amended, shall be assessed within five years after the return was filed, and no proceeding in court for the collection of such taxes shall be begun after the expiration of such period.

(U. S. C., Title 26, Sec. 1057.)

Revenue Act of 1926, c. 27, 44 Stat. 9:

SEC. 274. (a) If in the case of any taxpayer, the Commissioner determines that

there is a deficiency in respect of the tax imposed by this title, the Commissioner is authorized to send notice of such deficiency to the taxpayer by registered mail. Within 60 days after such notice is mailed (not counting Sunday as the sixtieth day), the taxpayer may file a petition with the Board of Tax Appeals for a redetermination of the deficiency. Except as otherwise provided in subdivision (d) or (f) of this section or in section 279, 282, or 1001, no assessment of a deficiency in respect of the tax imposed by this title and no distraint or proceeding in court for its collection shall be made, begun, or prosecuted until such notice has been mailed to the taxpayer, nor until the expiration of such 60-day period, nor, if a petition has been filed with the Board, until the decision of the Board has become final. Notwithstanding the provisions of section 3224 of the Revised Statutes, the making of such assessment or the beginning of such proceeding or distraint during the time such prohibition is in force may be enjoined by a proceeding in the proper court.
(U. S. C. App., Title 26, Sec. 1046.)

SEC. 277. (a) Except as provided in section 278—

* * * * *

(3) The amount of income, excess-profits, and war-profits taxes imposed by the Act entitled "An Act to provide revenue, equalize duties, and encourage the industries of the United States, and for other purposes", approved August 5, 1909, the Act entitled "An Act to reduce tariff duties and to provide revenue for the Government, and for other purposes", approved October 3, 1913, the Revenue Act of 1916, the Revenue Act of 1917, the Revenue Act of 1918, and by any

such Act as amended, shall be assessed within five years after the return was filed, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period.

* * * * *

(b) The running of the statute of limitations provided in this section or in section 278 on the making of assessments and the beginning of distraint or a proceeding in court for collection, in respect of any deficiency, shall (after the mailing of a notice under subdivision (a) of section 274) be suspended for the period during which the Commissioner is prohibited from making the assessment or beginning distraint or a proceeding in court, and for 60 days thereafter.

(U. S. C. App., Title 26, Sec. 1057.)

SEC. 280. (a) The amounts of the following liabilities shall, except as hereinafter in this section provided, be assessed, collected, and paid in the same manner and subject to the same provisions and limitations as in the case of a deficiency in a tax imposed by this title (including the provisions in case of delinquency in payment after notice and demand, the provisions authorizing distraint and proceedings in court for collection, and the provisions prohibiting claims and suits for refunds):

(1) The liability, at law or in equity, of a transferee of property of a taxpayer, in respect of the tax (including interest, additional amounts, and additions to the tax provided by law) imposed upon the taxpayer by this title or by any prior income, excess-profits, or war-profits tax Act.

(2) The liability of a fiduciary under section 3467 of the Revised Statutes in respect

of the payment of any such tax from the estate of the taxpayer. Any such liability may be either as to the amount of tax shown on the return or as to any deficiency in tax.

(b) The period of limitation for assessment of any such liability of a transferee or fiduciary shall be as follows:

(1) Within one year after the expiration of the period of limitation for assessment against the taxpayer; or

(2) If the period of limitation for assessment against the taxpayer expired before the enactment of this Act, but assessment against the taxpayer was made within such period, then within six years after the making of such assessment against the taxpayer, but in no case later than one year after the enactment of this Act.

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(c) For the purposes of this section, if the taxpayer is deceased, or in the case of a corporation has terminated its existence, the period of limitation for assessment against the taxpayer shall be the period that would be in effect had the death or termination of existence not occurred.

(d) The running of the period of limitation upon the assessment of the liability of a transferee or fiduciary shall, after the mailing of the notice under subdivision (a) of section 274 to the transferee or fiduciary, be suspended for the period during which the Commissioner is prohibited from making the assessment in respect of the liability of the transferee or fiduciary, and for 60 days thereafter.

(e) This section shall not apply to any suit or other proceeding for the enforcement of the liability of a transferee or fiduciary pending at the time of the enactment of this Act.

(f) As used in this section, the term "transferee" includes heir, legatee, devisee, and distributee.

(U. S. C. App., Title 26, Sec. 1069.)

SEC. 281. (a) Upon notice to the Commissioner that any person is acting in a fiduciary capacity such fiduciary shall assume the powers, rights, duties, and privileges of the taxpayer in respect of a tax imposed by this title or by prior income, excess-profits, or war-profits tax Act (except as otherwise specifically provided and except that the tax shall be collected from the estate of the taxpayer), until notice is given that the fiduciary capacity has terminated.

(b) Upon notice to the Commissioner that any person is acting in a fiduciary capacity for a person subject to the liability specified in section 280, the fiduciary shall assume, on behalf of such person, the powers, rights, duties, and privileges of such person under such section (except that the liability shall be collected from the estate of such person), until notice is given that the fiduciary capacity has terminated.

(c) Notice under subdivision (a) or (b) shall be given in accordance with regulations prescribed by the Commissioner with the approval of the Secretary.

(d) In the absence of any notice to the Commissioner under subdivision (a) or (b), notice under this title of a deficiency or other liability, if mailed to the taxpayer or other person subject to liability at his last known address, shall be sufficient for the purposes of this title even if such taxpayer or other person is deceased, or is under a legal disability, or, in the case of a corporation, has terminated its existence.

(U. S. C. App., Title 26, Sec. 1070.)

SEC. 283. (a) If after the enactment of this Act the Commissioner determines that any assessment should be made in respect of any income, war-profits, or excess-profits tax imposed by the Revenue Act of 1916, the Revenue Act of 1917, the Revenue Act of 1918, the Revenue Act of 1921, or the Revenue Act of 1924, or by any such Act as amended, the Commissioner is authorized to send by registered mail to the person liable for such tax notice of the amount proposed to be assessed, which notice shall, for the purposes of this Act, be considered a notice under subdivision (a) of section 274 of this Act. In the case of any such determination the amount which should be assessed (whether as deficiency or as interest, penalty, or other addition to the tax) shall, except as provided in subdivision (d) of this section, be computed as if this Act had not been enacted, but the amount so computed shall be assessed, collected, and paid in the same manner and subject to the same provisions and limitations (including the provisions in case of delinquency in payment after notice and demand and the provisions prohibiting claims and suits for refund) as in the case of a deficiency in the tax imposed by this title, except as otherwise provided in section 277 of this Act.

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(U. S. C. App., Title 26, Sec. 1064.)

SEC. 1005. (a) The decision of the Board shall become final—

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(b) If the Supreme Court directs that the decision of the Board be modified or reversed, the decision of the Board rendered in accordance with the mandate of the Supreme Court shall become final upon the ex-

piration of 30 days from the time it was rendered, unless within such 30 days either the Commissioner or the taxpayer has instituted proceedings to have such decision corrected to accord with the mandate, in which event the decision of the Board shall become final when so corrected.

(c) If the decision of the Board is modified or reversed by the Circuit Court of Appeals, and if (1) the time allowed for filing a petition for certiorari has expired and no such petition has been duly filed, or (2) the petition for certiorari has been denied, or (3) the decision of the Court has been affirmed by the Supreme Court, then the decision of the Board rendered in accordance with the mandate of the Circuit Court of Appeals shall become final on the expiration of 30 days from the time such decision of the Board was rendered, unless within such 30 days either the Commissioner or the taxpayer has instituted proceedings to have such decision corrected so that it will accord with the mandate, in which event the decision of the Board shall become final when so corrected.

(U. S. C. App., Title 26, Sec. 1228.)

Revenue Act of 1928, c. 852, 45 Stat. 791, 870:

SEC. 505. SAME—TRANSFEREE CASES.

(a) Section 280 (d) of the Revenue Act of 1926 is amended to read as follows:

"(d) The running of the statute of limitations upon the assessment of the liability of a transferee or fiduciary shall, after the mailing of the notice under subdivision (a) of section 274 to the transferee or fiduciary, be suspended for the period during which the Commissioner is prohibited from making the assessment in respect of the liability

of the transferee or fiduciary (and in any event, if a proceeding in respect of the liability is placed on the docket of the Board, until the decision of the Board becomes final), and for 60 days thereafter."

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